

PLANNING COMMISSION MINUTES

SEPTEMBER 8, 1999

CALL TO ORDER Chairman Maks called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Dan Maks; Planning Commissioners Tom Wolch, Vlad Voytilla, Eric Johansen, Sharon Dunham, Don Kirby, and Charles Heckman.

STAFF PRESENT: Staff was represented by Senior Planner Barbara Fryer, Senior Planner Steven Sparks, Project Engineer Jim Duggan, Assistant City Attorney Ted Naemura, and Recording Secretary Cheryl Gonzales.

There were no visitors in the audience who wished to address the Commission on any non-agenda issue or item.

There was no ex parte' contact declared or any disqualification by any member of the Commission from participation.

NEW BUSINESS

PUBLIC HEARINGS

A. **CPA 99-00016/RZ99-00009 BASELINE AVENUE TUFFLI PROPERTY COMPREHENSIVE PLAN MAP AMENDMENT AND REZONE.**

This proposal is to reassign the Washington County Transit-Oriented Residential – 18-24 units per acre (TO: R18-24) designation to City Multiple Use Comprehensive Plan map designation and City Station Community – High Density Residential, an equivalent zoning designation. The site is located northwesterly of the intersection of SW Baseline Road and SW 170th Avenue. The site is within the County TO: R18-24 zone and is approximately 4.51 acres in size. Tax Lot 00600; Map1S1-06AC.

Staff Report was presented by Barbara Fryer. She stated the amendment proposed was a quasi-judicial amendment to add a City comprehensive plan map designation and zoning district for Tax Lot 600 1S106AC. The Tax Lot was annexed through annexation 99-00005 on August 16. The first reading of ordinance will occur on September 13, second reading would follow and the annexation would be effective 30 days later. The proposal was to then designate that property with City zoning and comprehensive plan designations. The property was currently zoned in Washington County as transit oriented R18 to 24.

The City equivalent plan was designation as multiple use; the zoning district was station community high density residential. This would allow a range of 24 to 30 units per acre. Considering the distance from the platform, only 24 units per acre would be allowed. Staff believed this proposal met all criteria and recommended approval.

Chairman Maks commented that this proposal then was not their UPAA standard; that 24 would be the maximum per acre. Ms. Fryer agreed. Chairman Maks asked what the maximum density in the county was; answer, 24 units per acre. Chairman Maks asked about the procedure if the property owner decided he wanted to go to a higher density in the future. Ms. Fryer stated there was not. The property owner would need to propose a text amendment to the City's development code to allow the higher density throughout all the transit oriented districts.

Commissioner Johansen clarified the translation of the zoning between the two counties and what the UPAA recommends, and commented that they do not have the table which would indicate corresponding zones precisely.

Commissioner Voytilla pointed out a small island area (near 170th) on the exhibit and asked the ownership. Ms. Fryer stated it was a separate ownership and did not petition to annex and so was not subject to this comprehensive plan amendment and rezone.

Commissioner Wolch also mentioned the road area being included and stated usually this was a separate action initiated by the county surveyor. Ms. Fryer stated they could take jurisdiction over planning matters on the road; while the maintenance requirements would come under separate action. She further stated that the proposal tonight would in no way alter Washington County's responsibility for access or for maintenance. It would come under a separation action.

Commissioner Kirby made comments regarding Exhibit B, the spattering of island areas, particularly the one located near SW 173rd, and another near Hurl and 174th. He also asked why the road was included when the adjoining properties had elected not to annex into the City. Ms. Fryer answered that the City had a policy to include any of the right-of-way that are adjacent to any other parcels that do annex. This action allowed the infrastructure underneath the road (the water, sewer and the storm) to become the City's responsibility. The City would then permit any of those required improvements if the property were to redevelop. Ms. Fryer further stated that because 170th now connected with the current City limits to the north, the City could potentially petition Washington County to maintain the entire section of 170th. Also, it was the preference of the police department to have entire segments of roadway as a matter of jurisdiction and surveillance. Commissioner Kirby continued that these statements being the case, then why was this area spotty. Ms. Fryer replied that some of these had developed prior to current policies; this leads to the current pattern of development in this area of Washington County. Commissioner Kirby commented that once this amendment was place, would there be

motivation for this neighborhood to want to connect, i.e., police services, utilities, county of right-of-way. Would there be some way to inform the neighbors of this occurring, that this might be attractive situation for them. Ms. Fryer responded that they only send notice out to those persons who testify at the hearing, not to the surrounding property owners of the proposed action. Notice was sent prior to the hearing, 500 feet; prior to the annexation, 100 feet. Ms. Fryer stated staff are currently exploring alternatives for the annexation program.

Commissioner Heckman commented that police like full roads, but asked what it would have taken to be more than a half street with regard to the comprehensive plan amendment, zone change, etc. Ms. Fryer stated that the mapping was misleading, in that the other half width of that road right-of-way had been vacated; that is was now part of the parcel to the east.

PUBLIC TESTIMONY:

ERIN CHAPMAN, representing Emerald Development Company, 14355 SW Allen Blvd., Suite 210, Beaverton, Oregon 97005.

MR. TIM HORST, 15958 NW Wismer Drive, Portland, Oregon 97229

Ms. Chapman stated they were under contract now to potentially purchase the triangle area between the proposed property and 170th. Should everything be successful, it was their intent that the entire area then be part of the development proposal and be annexed to the City as well. She noted they were in support of the City's zoning and Staff Report. It corresponded to their comprehensive plan.

Commissioner Heckman asked if Ms. Chapman was aware of the annexation policy some months ago and did they own the property at the time it was ongoing. She replied they did not and they currently do not own the property at this time. They were in the feasibility to purchase it. The property has two separate owners of these two properties. Initially, her company had wanted to purchase the larger "square" property; but it later became apparent to also obtain the triangular piece in order to better accomplish their purposed development.

The City attorney had no final comments. The public hearing portion of the meeting was then closed.

Commissioner Heckman was in support of the action.

Commissioner Kirby was also in favor of the application, staff did a very good job in zone translating. He also commented on the area being so fragmented, but that it was going to be made less so by this other parcel possibly coming in as described by Ms. Chapman.

Should this happen, it would be advantageous to get the word out to the combined group of orphaned properties about annexation. Commissioner Kirby encouraged staff to do whatever appropriate to further that end.

Commissioner Wolch was completely in support of the application, an administrative action and support a motion to approve.

Commissioner Voytilla was also in support, as was Commissioners Dunham and Johansen who stated it met the criteria and followed the UPAA.

Chairman Maks was also in support the application.

Commissioner Voytilla MOVED and Commissioner Kirby SECONDED a motion to approve CPA99-00016, BASELINE AVENUE TUFFLI PROPERTY COMPREHENSIVE PLAN AMENDMENT based on the facts and findings in the Staff Report dated August 6, 1999.

The question was called and the motion CARRIED unanimously.

Commissioner Voytilla MOVED and Commissioner Dunham SECONDED a motion to approve RZ99-00009, REZONE, based on the facts and findings in the Staff Report dated August 6, 1999.

The question was called and the motion CARRIED unanimously.

Chairman Maks asked if the Commission had a final copy of the regional framework document Ms. Fryer responded that he was referring to the Urban Growth Management Functional Plan, and asked if they had the codified version? She stated she would make sure that each member would get a copy. Chairman Maks asked about the Title contents, definitions of town centers, regional centers, etc. Ms. Fryer confirmed this was the document.

B. TA99-00009 - UTILITY UNDERGROUNDING TEXT AMENDMENT

This City-initiated proposal would, if approved, amend the Development Code to allow the collection of "in-lieu" fees as an alternative to placing utilities underground as currently required by the Development Code. The proposed text amendment would add a new section to Chapter 60 and amend several sections within Chapter 40 of the Development Code. Additional amendments to Ordinance 2050 text may be necessary in order to assure internal consistency with the proposed text amendments.

Staff Report was given by Steven Sparks, Senior Planner, Development Services Division, Beaverton Community Development Department, who introduced Jim Duggan,

Development Services Engineer; Laura Jackson, W&H Pacific. Mr. Sparks turned the report over to Mr. Duggan who would explain background issues.

Mr. Duggan's objective was to provide a historical perspective with regard to what they've been dealing with under the present ordinances. The current undergrounding provisions have been essentially the same since 1982. The Planning Director and City Engineer are charged in the code to evaluate, through the facilities review process, to make or recommend conditions of approval. He noted there were very troubling sections regarding utility undergrounding in the code due to differences in wording between the subdivision section and the design review section; things that would make interpretation very difficult. It was inconsistent, certain portions of the code were not routinely enforced; certain portions were routinely ignored. Because there were so many projects in 1995, it had become necessary to establish one single process. Prior to that time, there had been various ways to deal with the undergrounding provision. As an example, many projects had paid a fee in lieu based on estimated costs; some projects had paid nothing. However, in 1995 it was decided that if there was a situation where it seemed undergrounding wasn't practical or wasn't warranted, rather than waiving the requirement as previously, a fee in lieu would be determined. Since that time, a large sum of money has been deposited into an account which can be used for capital improvement projects. Presently, problems exist in administering the code due to the lack of objective guideposts in a less than full undergrounding provision. The end result envisioned was practicality and specificity in undergrounding and to establish a fund and funding mechanism with development to get utilities underground. Mr. Duggan then turned the report over to Ms. Jackson.

Ms. Jackson introduced herself as representing a consultant firm who did right-of-way management plans and had worked with many utility companies, helping them get through regulatory hurdles and permanent processes. In researching, they looked at a number of other policy models in Oregon, Washington and nationwide. They found several ordinances in place in other jurisdictions that either operated under nonremonstrance system or a fee in lieu of. These two options were brought to the City. There was also a committee formed to gather input from city staff, GTE, PGE and TCI cablevision. A nonremonstrance system was not desirable for the City of Beaverton because staff wanted funding to be upfront in a development and not burden a future property owner with the issue of utility undergrounding.

The City of Tigard was looked at as a good model for fee in lieu of. It was pointed out by the utility providers, however, that the fee Tigard currently charged, \$27.00 a linear foot, barely covered the cost of just digging the trench, not to mention the installation of conduit or doing any kind of cable splicing. Also their ordinance did not have any solid criteria as to mandatory undergrounding or allow the fee to be paid. It seemed to be left to the discretion of the developer to either do the construction or the in lieu payment. The City of Beaverton indicated to the consultant team that the City clear wanted criteria under which to grant the fee payment versus to require construction. To determine this, the City's

engineering design manual was examined with regard to pavement damage, future street reconstruction, etc.

An issue for the City and the utility providers was the length of segment to be undergrounded; the level of service (electric, telecommunication, cable television) determining the cost effectiveness. Ms. Jackson referred to the Staff Report, the draft ordinance section 60.55.25, a table illustrating those variables which make for cost effective length of segment or level of service to be undergrounded. She also stated that staff are working with the utility providers in a separate process, to adopt a fee schedule based on current costs for digging a trench, and the costs for locating the different types of service underground.

Mr. Sparks stated that it was staff's recommendation that the Commission approve the text, to go forward to the City Council. He added that before the meeting he had handed out some revised pages to the proposed text. In the first three pages, these were noted in the highlighted text. In the remaining six pages, the addition of the phrase, "all existing and proposed utility lines" was highlighted.

Chairman Maks commented that the Commission is going to make the charge, and asked if it was going to be able to be reviewed annually. Mr. Sparks responded that there was a provision that allows by resolution the City Council to adjust the fees yearly. Chairman Maks stated this fee was to be based on what it would cost to bury those utilities underground at this present time. Mr. Sparks replied they are working with the utility service providers to determine their costs; reference was made to the table of the levels of service in the proposed text. Rates vary according to category; i.e. PGE charged \$50.00 a linear foot for tap lines, but charged \$200.00 a linear foot for feeder lines. He also stated that the annual review would be adjustments based on the consumer price index. Chairman Maks pointed out it was his concern that the City and/or taxpayers not have to put out additional dollars; that these fees were to be based on current costs.

Chairman Maks was also concerned about the dollars being spent through the capital improvements process. There was a different priority system set up by the Council and planned road projects. He gave the example of the overhead power lines along Murray Boulevard between Weir and Brockman, nearly costing the neighborhood of 47 homes the entire noise walls they had in front of them. It was Chairman Maks point that if the area where the dollars came from had the need, they would then receive the higher priority. Mr. Sparks agreed, this could be done. The issue being then the dispersal of funds, Chairman Maks stated that because the dispersal of funds was identified as the City Council's capital improvements project, this was not acceptable.

Mr. Duggan commented that when this text amendment got to the City Council, they would explore a number of those issues. He stated that Chairman Maks concern was primarily with 60.55.35, the establishment of priorities. The purpose for establishing the

fund and talking about how to spend it was the content of the proposed text amendment and to attach more strings would necessitate it's return to staff. Chairman Maks, because of having dealt with the priority system of undergrounding previously, insisted the proposal would not benefit the resident, i.e., Davies road extension, MSTIP-2.

Mr. Sparks asked Chairman Maks if he would suggest striking the last sentence of that paragraph.

Chairman Maks responded by stating that if nothing was happening, the money could be spent as it was designated. It would be 15, 20 years before development. However, through the process of the capital improvements program, if both items were on the list, the dollars tagged to that resident neighborhood improvement get moved up.

Commissioner Johansen was concerned about the adjustment of the fee on an annual basis. Mr. Sparks replied that this would be a tickler file type of issue: research would be initiated to determine the CPI for western cities, class size, and adjust accordingly. This has been the process since 1993. Commissioner Johansen questioned that perhaps maybe the engineering cost index would be a more appropriate measure. Mr. Sparks stated that was possible, they were still in discussions with service providers. Commissioner Johansen added that the intent of the fee should be fully self-supporting of the cost of undergrounding; that it was a cost that should not be put to the public because of the adoption of a fee schedule that does not receive full cost recovery. Mr. Sparks answered that the problem to predict actual cost of the project was not an exact science, especially when looking at development eight years further out and applying 1999 dollars.

Commissioner Johansen asked about the nonremonstrative system. Mr. Sparks discussed the in lieu program and a waiver of remonstrance (i.e. for any future road improvements, storm drainage improvements). Staff's feeling on this was that the City would need the money as development occurred. There were needs for undergrounding funds now. The single family home owner would be adversely affected if, at a later date, the City required the property owner to pay a substantial fee for utility undergrounding.

Regarding the full cost recovery section, page 3 of 9, the occurrence of negotiations when the cost required has reached some determined level but was not fully cost recovering, resulting in the property owner having to come up with the additional cost, Commissioner Johansen asked how necessary was this? Ms. Jackson responded there were some rare occurrences; i.e. a junction or switching facility, requiring the use of some very expensive equipment possibly costing tens or hundreds of thousands of dollars to move wires from above ground to underground. She also indicated that some of that cost would also probably accrue to the utility provider itself, and not to just the City of Beaverton. This section was included then for these rare occurrences.

Chairman Maks presented the example of the power lines on a section of Murray Boulevard that were not put underground due to the cost of hundreds and hundreds of thousands of dollars. Ms. Jackson stated that this situation related to the 50,000 kilovolts that could not be undergrounded. There would have to be special protections with this kind of service and one property owner should not have to bear that cost.

Commissioner Johansen stated that his concern was primarily that of the property owner paying full cost of serving his property, but that those extra costs that in fact go on to benefit a larger area, would be subject to negotiations. Chairman Maks stated this area would be tough to identify, as in a utility line being undergrounded which would support more than a 50 lot subdivision.

Ms. Jackson pointed out that these concerns were possibly addressed in the reference Complex Utility Conditions in section 60.55.25.

Mr. Duggan stated his observation on this negotiation section that up until the present, they have been administering the undergrounding fee in lieu as it was done historically. For the Commission's information, the current fee in lieu was roughly \$30.00 per linear foot for cable TV or telephone and \$50.00 a linear foot for a normal power situation. He stated these were fair in terms of cost recovery and what the City could be expected to pay. It was also placing the administration of the undergrounding requirement in a negotiation, where planning would be among the City Engineer, Planning Director and the utility provider. The guidelines were very specific as to what falls into a negotiation. Commissioner Johansen commented that success would be determined by how well they stick to requiring what needs to be required. Mr. Duggan stated the City will have determined objective standards with regard to fee in lieu; it will be set and codified how that methodology was going to work. It was very clear in the comprehensive plan and in the development code that undergrounding was a priority. However, there has been a disconnect between some recent CIP projects, such as Davies Road, Farmington Road. Undergrounding wasn't considered a priority and there was no funding available.

Mr. Sparks stated that the code states utilities will be undergrounded. However, persons doing only a small partition, or a two lot subdivision, have complained this did not make economic sense because of the exorbitant cost for doing so little requirement of an undergrounding project. Mr. Sparks added that what the City had been doing was waiving the requirement and not getting any money. But now with the new section in the code describing the in lieu fee program, the City could examine the criteria and apply it to the situation. If it was determined the criteria was met, the City could support and accept the fee. But if the criteria were not met, they would require the utilities to be put underground.

Commissioner Wolch questioned the intent of the code change with regard to road projects being required either to underground or pay a fee in lieu; or would the present system, if money were available, the project gets done; if not, it doesn't. He further

recalled in the MSTIP program that those moneys would not be used for undergrounding. Commissioner Wolch asked would this code amendment change any that? Mr. Sparks replied that he did not think it changed any of that. He gave the example the City wanting to do a reconstruction project which required Type 3 Design Review approval. That being the case, one of the sections of the text stated that the utilities would need to be put where practical and feasible, utility lines would be placed underground in accordance with Chapter 65. However, the assistance City Engineer has discussed putting in an "out" in the text that would exempt the City from doing what was described above. MSTIP funds were for road and access improvements, not for utility undergrounding. Mr. Sparks stated this circumstance was a larger policy issue that would require City Council identify exactly their intentions. Commissioner Wolch summarized that basically this amendment was to maintain the status quo but they were coming up with a fee system for development. This fee system would then make the fee collection more objective, more fair, more predictable.

Commissioner Voytilla realized staff's attempt to simplify a very, very complicated process. But from Commissioner Voytilla's experience in the development industry, it was difficult to see how this was going to be successful. He stated that trenching costs were normally borne by the private developer who was required to do it. This being so, how did the utility providers arrive at an accurate cost for that. Mr. Sparks stated that in franchise agreements, the City can require the utility provider to underground. In terms of providing an accurate cost, in its entirety, for an in lieu program, we have turned to them to provide the example of what their trenching costs would be, presuming they would be doing the work. Commissioner Voytilla asked if staff had looked at any other sources; i.e. Loy Clark, a contractor who does a considerable amount of utility underground work in the area, the Metro area. There was also Henkels and McCoy and a few others.

Ms. Jackson commented that at this point, they only involved the providers. Due to the deregulation of the telecommunications industry and many redundant systems going in; providers were being required by some jurisdictions to go out and either dig a trench, or bore or other combinations of construction methods. Hence, their costs would reflect the current costs of the required construction activities. Mr. Duggan added that it had been experience that most utilities had very few crews that performed such work; there were in fact contracting with Loy Clark, Henkels and McCoy, other utility installers. Likely there were other administration costs added to their costs, but overall the costs reported thus far were fairly in line with what could be expected in a typical installation.

Commissioner Voytilla asked what was the typical installation because of additional conditions being added on; i.e., in the case of opening the ground and finding rock, tree roots, unstable soil conditions, water. How was this accounted for? Mr. Duggan stated that they had asked the providers to take an average situation and report back the cost numbers. His expectation was that those numbers would be fairly close to what was being charged currently which is \$35.00 a lineal foot for communications, \$50.00 to \$60.00 a lineal foot for typical power. Commissioner Voytilla asked which of the services were

essential, which ones were elective. Mr. Duggan answered that all the undergrounding services were franchised to operate in all of the easements and right-of-ways of the City. Consequently, they were essential when demanded by a local area. Commissioner Voytilla stated it was his understanding that power and telephone were essential; the telecommunications through cable was considered a non-essential service. Mr. Duggan stated he was not aware of those decisions/distinctions.

Commissioner Voytilla asked about the necessary amount of service needed for a project versus through service, which may in some cases be substantial. How would the property owner obtain some sort of beneficial credit for bearing the cost for those through service utility relocations, going from above ground to underground. Mr. Duggan replied that that was where the negotiation section would commence as the cost would be burdensome as to what was appropriate for a single owner or developer. Commissioner Voytilla asked about identifying those situations where the utility companies would be paying for future needs. Were there provisions included for this. Mr. Duggan responded there were not, because if the project went underground, this would not apply. It was only whatever was needed to satisfy the utility providers. If this was activated, it was only to identify the existing service and what it would take to go in. Commissioner Voytilla stated that were the utility company to come back and indicate in the development plan some future dedicated facilities, how would some kind of cost payback for those items be recovered. After all, it was the utility company having requested that implementation for future service. Mr. Duggan answered it would not be an issue if it was going to go underground. The developer would have to provide the necessary services for the utility. No credit would be given as this would be a cost of development. However, were the situation such that the utility company required provisions for enough conduit (as an example) to last into the next millennium, the negotiation section would be triggered.

Commissioner Voytilla questioned the contents of 60.55.15, item 3. Mr. Duggan explained this was in regard to the required two lifts placed on a new street. Commissioner Voytilla's concern was the language between mention of the base lift or the first lift, and the second lift, the construction sequencing. Mr. Duggan stated that this was clarified further in the engineering design manual. He added that it might be well to address this concern at item 3, making it more specific.

Commissioner Voytilla asked about stubbing in item 4. Mr. Duggan responded this related to cross-streets prior to paving; perpendicular extensions from the property as Commissioner Voytilla had earlier made reference. Commissioner Voytilla felt the language was not specific, possibly "street crossings" would be appropriate language, actually "street crossings at intersections" to streets that are perpendicular to the property. He indicated that as the text was, it looked like it was to be extended only slightly beyond the property line in the right-of-way or in the easement. Mr. Duggan asked if what was meant was modifying the language to read, "stubs for service connections and anticipated

service needs to adjacent properties, driveways, at intersections...". Those were the logical locations.

Commissioner Voytilla offered the example of the situation of street improvements where the existing utilities are pole mounted on one side, but aerial dropping to homes on the other side. The requirement was to go underground. How would one go underneath the street and service those people without them having a major benefit. Mr. Duggan stated this occurred frequently and that was where the table came in. There have been a number of solutions; i.e. a conduit placed under the street, a new pole placed, and then a single line which would preclude the more expensive changing the feed to the home. Commissioner Voytilla asked who was responsible for payment of the fee? Mr. Duggan stated the applicant either for a subdivision or a design review application. Commissioner Voytilla commented that essentially it would be back to the consumer.

Commissioner Voytilla's final comment concerned Murray, Allen and Farmington when lines are retained overhead, street trees can be better coordinated.

Commissioner Wolch commented about the property owner who got stuck paying a fee into a fund and was never seen again, that it was similar to the TIF program. He agreed with the residential priority issue discussed by Chairman Maks earlier. He also mentioned the aesthetic feature of undergrounding when looking at Murray, Allen, Durham Road. Murray was clearly the winner visually, and was in favor of promoting undergrounding as much as possible.

Commissioner Kirby questioned section 60.55.15, the services table, and asked the difference between electric and lighting. Mr. Duggan stated that this was a separate item was because with the exception the PGE power grid, there were lights either installed by the property owner or PGE, separate from the power supply. There were also some City owned lighting systems as well. Commissioner Kirby commented that regardless, were they not being driven by underground electric. He then addressed Item 3 with regard to sewers and storm drains being an additional utility element. He stated he saw no mention of any reference to water and gas. Mr. Duggan agreed that since they were trying to be all inclusive, water and gas should also be listed. The comment was made that water and gas can be put above ground, but it was not typically done.

Commissioner Kirby discussed the poles for cellular phones and co-location, the redundancy issue. He asked if it were possible to piggy-back telephone and cable underground. Ms. Jackson answered that it would depend on the technology, if it were fiber optic versus copper wire. Generally, it was possible. She also stated that these concerns and those of Commissioner Voytilla's were in the category of right-of-way management and the franchise agreement provisions that the City operated on. Piggy-backing was a result of the operation of a different mechanism other than what was in the

development code. Commissioner Kirby's interest was that this area was considered and the redundancy issue was imbedded in the amendment.

Referring to the table that outlined the level of complexity, upon reaching the "c", Commissioner Kirby stated that it was at this level, a developer could argue for the negotiation regarding the costs becoming prohibitive. He asked if it were possible to be at a "c" level only for electric and a "b" level for telephone, the "c" level triggering the negotiation. Ms. Jackson responded that according to the wording, it indicated where each service would fall into row "c". She added that according to the providers, there were not that many situations where all three would fall into that realm. The costs were fairly equal among the providers in terms of what a level "a" cost; it was higher for electric. It was at the level "c" where costs rose significantly, service was more complex; i.e. fiber optic having different splicing and connection requirements, the higher voltage power lines. Commissioner Kirby commented that future houses would be full of wire; various cables, fiber optic, multi-function internet technology. Mr. Duggan stated that that was happening already.

Commissioner Kirby also addressed 60.55.40, and asked how they arrived at 25 percent. Ms. Jackson answered that there was no particular rationale or model ordinance. They wanted a number high enough to be burdensome, but not excessively. Ten to fifteen percent was too low and would trigger more negotiations. 25 percent would be taken more seriously. Commissioner Kirby asked for more definition of the twenty-five percent, was the 25 representative of the estimated construction cost of the entire development project? Ms. Jackson stated that their objective was to discourage a single family home property owner from dividing the lot to build a second home and have to underground the adjacent utilities. Mr. Duggan agreed that the target applicant was the single family home owner rather than the large developer. The intent was to establish a threshold for the smaller projects.

Commissioner Kirby stated that this number was picked then in consideration of a volume that would be triggered. This being the case, he asked would it not be appropriate for this number to be reviewed annually, like the fee? Mr. Sparks clarified this stating that because it was in the development code as a rule, it would come back each year for review. Chairman Maks asked if staff were to find a problem with it, would they come forward? Mr. Sparks confirmed they would. Commissioner Kirby commented he would have been more comfortable with this had there been more polling or studies behind it; could have possibly looked at those projects where the fee was waived due to the magnitude of the cost. Was there an economic factor looked at in making that determination to waive. What were the percentages attached to the economic level at the time of waiver. Mr. Duggan responded that the 25 percent figure was actually geared to the smaller end of projects. He stated that sidewalk installation alone could run 10 to 15 percent of a total project cost.

Commissioner Heckman addressed a number of items in the Staff Report, he started with page 5, the phrase, “to increase the potential for cost of undergrounding”...etc. and asked what was meant by that. Ms. Jackson stated that basically its purpose was to obtain some money to account for adjacent improvements because developers have negotiated out of paying for the utility undergrounding, or paying a fee in lieu of. Commissioner Heckman questioned the sharing of costs from 50 blocks away. Ms. Jackson commented about the tracking of this money on a location/location basis or having it placed into a generic pool; i.e. the TIF funds. As it stands, it would be treated similar to the TIF funds.

Commissioner Heckman mentioned infill development and supplying water to the different lots. Mr. Duggan stated it was an issue of the lotting pattern and the installation of the main. If not coincidental, then service lines were not extended out to the lots. If the lotting pattern would be predicted, based on geometry, the services would be put in to avoid cutting up the asphalt later. Commissioner Heckman asked if the same thing would apply with gas. Mr. Duggan stated that NW Natural Gas did not install service lines. They would not put in any facilities unless first there was a call for service. Commissioner Heckman asked if gas transmission and distribution lines run within the right-of-way. They do not cause any disruption with the paving. Mr. Duggan agreed this was true; these were usually already in.

Heckman made reference to the term “co-using” as discussed by Commissioner Kirby. AT&T, MCI, and Sprint do in fact share the conduits in areas.

Regarding 60.55.35, funds collected from undergrounding fees, Commissioner Heckman suggested changing the word “may” to “shall”. This would imply a dedication of funds, the funds would be available, projects could be moved up and get done.

Chairman Maks asked if there were further questions of staff. He stated that this was the time for the public to address this application. There were no yellow cards.

Chairman Maks addressed the City Attorney as to final comments.

Assistant City Attorney Naemura noted a ministerial question for Section 60.55.25. Working from the new text, he suggested that staff and the Commissioners re-read that for consistent verbiage, tenses, coherency.

Regarding the priority establishment, in 60.55.35, the Commission should continue to examine the fee system being more of an assessments and fee based system and less like some kind of exaction. In the establishment of priorities, Mr. Naemura advised that they consider true need based on engineering and design issue and the issue of fair play; meaning those properties that have contributed and were more fully funded should be moved up.

Mr. Naemura also discussed the Commission's taking direction on some policy issues from the City Council. He directed the Commissioners to be specific and clear as to what was being sought and how the information could be integrated into their decision.

Lastly, was the Commission's ability to identify which high priority projects did not have any fees contributed to them, but have gotten other people's money. Mr. Naemura stated they might want to be aware of this in the future.

Chairman Maks also commented on the issue of fair play and the disbursement of funds.

Chairman commented that he would like to see staff come back and incorporate the Commissioner's comments. There were a number of significant and legitimate concerns which were addressed. Of particular note, staff could relate information from the last one or two years what the 25 percent would have triggered with regard to negotiations. Also the CIP and priority issue were important; Commissioner Voytilla brought up a number of issues to be expanded on. Commissioner Voytilla also encouraged staff to return with some private citizens who have done a lot of the utility design and coordinated with the utility companies directly, and also some of the development community. This would provide a more comprehensive feel for the issues out there relating to the entire text amendment. Chairman Maks also asked Mr. Naemura to perhaps codify some of his comments directed to the Commission.

Chairman Maks stated this was a hearing tonight and that he would leave the public testimony open since there will be changes to an initial application.

Commissioner Kirby MOVED and Commissioner Johansen SECONDED a motion to continue TA99-00009, UTILITY UNDERGROUNDING TEXT AMENDMENT, to a date certain of October 13, 1999.

The question was called and the motion CARRIED unanimously.

The meeting recessed for a break at 9:00 p.m.

The meeting reconvened at 9:05 p.m.

Upon reconvening, Commissioner Johansen became the Alternate Chairman.

C. TA99-00002 - 1999 OMNIBUS DEVELOPMENT CODE TEXT AMENDMENT #2

The proposed amendments implement Periodic Review Order #00628, Work Task #2 and #10. These work tasks propose to bring the City of Beaverton into compliance with Metro Code Chapter 3.07 Titles 2, 4, and 8 requirements. The proposed amendments will amend the Development Code and City Code to revise the City's parking standards consistent with Metro Title 2 requirements, limit the size of retail uses in industrial zoning

districts consistent with Metro Title 4 requirements, amend the City's existing site development and flood plain regulations, and other sections of the Development Code.

The staff report was given by Mr. Steven Sparks, Senior Planner. This was an amendment to revise the City's parking standard. It was largely the result of compliance with the urban growth development plan. Parking ratios varied according to use; the plan specified minimum and maximum parking size. The existing code was a minimum requirement code, there was virtually no upper limit to the amount of parking on a site. The proposed code would establish a minimum and a maximum parking ratio. There could be exceptions to the parking ratios through the process of a variance proceeding. It was also proposed to limit the amount of retail that could be located in employment areas. Staff is proposing to establish a maximum of 60,000 square foot of floor area for retail uses in the Campus Industrial zone. Staff was also proposing amendments to the Beaverton City Code and the Development Code to codify some amendments to the flood plain regulations. These were relatively minor and did not substantially alter existing provisions.

Mr. Sparks stated the 60,000 gross square foot figure for retail use was in the CI zone. That was as Metro specifically stated in Title 4 of the Urban Growth Management Functional Plan.

Commissioner Heckman questioned Item 3 on page 7 of 36, regarding another fee if time ran out. Mr. Sparks answered yes, it was incentive to get something done with a submitted application. On page 12 of 36, Commissioner Heckman asked the definition of public buildings. Mr. Sparks responded buildings with an institutional use; i.e. City Hall, Fire Department, public agencies, publicly owned buildings. Page 34 of 36, Commissioner Heckman asked what a CT-C zone? Mr. Sparks stated that is the Town Center which will become the regional center in the next couple of months. That is the downtown area. At the time this action will be completed, it would read Regional Center - Old Town Regional Center - Transit Oriented, and Regional Center - East.

Commissioner Heckman also discussed the application of the awning depth to different configurations; i.e. 9 foot sidewalks, 12 feet, 15 feet.

Commissioner Dunham made a comment regarding page 11 of 36, that the parking ratio requirement was graphically illustrated exceptionally well, very readable. Page 13 of 36, she noted that the high school and college were put together, where previously in the land use category they were split out separately. Why was this? Mr. Sparks answered that under the Functional Plan, these uses are all the same, so they were merged. Page 28 of 36, Ms. Dunham noted an inconsistency in the parking requirement. Mr. Sparks explained that City was under obligation to adopt what the Functional Plan said. Page 21 of 36, regarding the 5 and 10 percent credit given for reduction for transit amenities, was it necessary to meet all the criteria listed below to receive the credit. Mr. Sparks answered that in the past, it was necessary to meet all the items, "a" through "e". Ms. Dunham

suggested that this should be better articulated for clarity. Page 24 of 36, was it necessary to carry over Ordinance 3358; was enforcement part of that same ordinance. This was not clear. Mr. Sparks stated he would verify and add it back into the text for better explicitness. Page 34 of 36, Ms Dunham asked if awnings were addressed in the uniform building code. The response was yes. Page 35 of 36, the use of the word, appurtenances, should probably be defined in Section 90 of the definitions, as a community aspect. Page 36 of 36 concerned definitions for parking long term, parking short term. This should state long term, short term for vehicles.

Commissioner Wolch commented on page 7 of the Staff Report, the limitation on the gross square feet for retail in the CI zone; was that by parcel, by development, by area encompassed by a zone. He was unclear as to what the limitation was, what was the trigger. Commissioner Wolch was concerned that depending on how it was read, it may or may not be much of a control. Mr. Sparks replied that Metro was okay with the proposed text. It was not parcel specific but it was within development control area. Each of the campus industrial zoning districts were within five development control districts. Within each of the development control districts, ten percent of the land could be devoted to retail businesses. Also, the free standing retail business could be more than 15,000 gross square feet but less 60,000 gross square feet. Mr. Sparks gave the example of some calculations which would produce a number of 60,000 gross square feet stand alone retail uses which would be within ten percent of the total area. Commissioner Wolch commented that this system would be difficult to apply and asked if the over riding intent was to keep employment in the CI zones and not allow infiltration of others uses to the point where they would be diluted in their function of being an employment center. Mr. Sparks agreed this was intent.

Commissioner Wolch asked on page 21 of 36, about adding the "and" as discussed earlier by Commissioner Dunham, so the text would be clear that all the features would have to complied with. Also, was the City required to give the five percent credit if the all the criteria were met according to the Functional Plan? Mr. Sparks answered that the Functional Plan did not require any of this. Commissioner Wolch suggested that language be used to support a more discretionary action by the City. Mr. Sparks agreed that changing the wording from "shall" to "may" would be a policy shift, but he could not comment on the significance of doing this.

Mr. Naemura commented that perhaps one way this could shake out would be during preapplication conferences. There would follow some discussion of why this was being requested, precipitating policy reasons why staff would want to discuss it at that preapplication conference, or some later date, or even not at all. The results would be contained in the staff's report regarding what areas were acceded to and those which were not. Mr. Sparks concurred that this was reasonable progression of thought.

Commissioner Johansen, alternate chair, concurred that he was not comfortable with this section, the classic example being a total misrepresentation of it was to the high school property. The bus service there did not serve the high school in the hours the high school operated. He was in favor of allowing more appropriate criteria to be met before its inception. Mr. Sparks felt that the first sentence of that paragraph regarding use or proposed use on an existing transit route, which lead to subsection 1 which stated “shall be approved”, that changing the “shall” to “may” would make the text more consistent with the introductory paragraph.

Mr. Naemura questioned the number of criteria available on which to base recommendations in most kinds of development scenarios. Mr. Sparks discussed the complexity of transit amenities and that what was here, was the result of lengthy discussions in 1996. This being the case, his process was just to renumber it. He suggested perhaps coming back to look at this section after having added more criteria appropriate for the reconsideration of 15 minute headways, issues of that nature. Commissioner Johansen commented that staff could develop criteria to demonstrate compatibility and/or consistency with the availability of transit service, etc.

Mr. Naemura stated that this does not constitute a major reworking of what is here. Mr. Sparks stated that the five criteria seemed perfectly reasonable.

Commissioner Wolch was concerned about the Staff Report stating that the Commission was not making substantive changes in this text amendment.

Mr. Sparks was agreeable to minor changes, keeping the intent of the notice intact.

Commissioner Heckman commented that staff was given discretionary latitude by changing the “shall” to “may”. Commissioner Kirby concurred.

Commissioner Wolch, on page 24 of 36, Enforcement, regarding suspension of any permit, asked about what permit was being discussed. Mr. Sparks stated this was under the temporary use permit section that he moved back to Section 12, on page 35 of 36. What would be appropriate then would be to move #13, under Enforcement, back to page 36 of 36, under Section 60.45.05.6? It would be Subsection B. To make this clear, what was shown as 13 on page 24 of 36, would be moved and have a new section number of 60.45.05.7. Commissioner Wolch stated this made more sense.

Commissioner Voytilla, on page 3 of 36, under 3C, noted the distance highlighted for setback for structure for an alley to a garage, was 24 feet. Other setbacks were 20. He asked if the alley was the factor making that 24, to give more room? Mr. Sparks stated that it was his understanding that it was the width of the alley that the garage door was facing was the driving factor. Regarding the charts for parking, page 13, how was the number of parking spaces required calculated for an educational institution. Mr. Sparks

stated that that would be one per staff was the minimum requirement; maximum would be 1.5. Commissioner Voytilla asked about allowance then for school functions, plays, musical recitals. Mr. Sparks stated in these situations, parking would be in the street. Commissioner Voytilla commented that that was his point, especially at high schools with athletic facilities. Possibly this would be another identified area for a future amendment as the numbers appear very low. Mr. Sparks responded that high schools, colleges, universities are established by Title 2 of the Functional Plan. The option for change would be through variance processes to allow the ratio to be exceeded. However, elementary schools and middle schools could be looked at. Commissioner Voytilla's concern was the burden on the adjacent neighborhoods with the off street parking. Mr. Sparks added that the existing parking requirement for elementary and middle schools was one space per employee presently and was consistent with the City. It was also his understanding that in looking at a school facility, it encompasses all its components; not a stand-alone auditorium, arena, stadium. Commissioner Voytilla felt this did not adequately address the needs of the school functions.

Commissioner Voytilla asked about page 6 on the Staff Report, the flood hazard issue, was this directed at the City of the Beaverton? Mr. Sparks stated the staff at FEMA were citing specific things that were lacking in the current code language. Commissioner Voytilla questioned the accuracy of the FEMA maps. Mr. Sparks responded they were going through a comprehensive date currently.

Alternate Chairman Commissioner Johansen commented on page 36, the definition of zone B. He pointed out that the significant part of that was the 20 minute peak transit service.

Mr. Naemura commented that he was comfortable in changing the "shall" to "may" in this proceeding so as to change from the mandatory to a permissive stance on the reduction of minimum parking spaces in the major pedestrian routes.

The proceeding was opened up the public for testimony.

DAVID LEACH, 25480 SW Bald Peak Road, Hillsboro, Oregon, a commercial property owner in Beaverton, stated he was concerned about the parking being revised with this amendment in that it would effect the type of uses per unit and per property and limit them. He was uncertain as to why the amendment would include or should include existing properties, but it was his concern that it wouldn't. Mr. Leach also stated that it would effect property values and as a result, was in opposition to the amendment.

Alternate Chairman Johansen asked staff, with respect to existing properties, when would the change in parking standards take effect. Mr. Sparks replied that they would go into effect when new uses came in and replaced existing uses. He gave the examples of redevelopment and a financial institution converting to a retail use, the parking ratio would

change accordingly. These were the same things that would happen under existing code today. The exception would be grandfather clauses.

Mr. Leach's concern was changes in tenancy and the resultant changes in the required parking. This would consequently effect the type of tenant in the future and be restrictive in nature.

Mr. Sparks agreed that this reasoning was correct.

Mr. Sparks questioned the Commission whether or not they were comfortable with the suggestions? Alternate Chairman Johansen followed up.

Commissioner Heckman asked if it would come back as a land use order. Mr. Sparks stated it would be a land use order signed by the Chairman. Commissioner Heckman was okay having staff do that and before the order was signed by the Chairman; have it reviewed by the Chairman.

Commissioner Kirby and Commissioner Dunham concurred.

Commissioner Wolch stated he would like to see it again, given the Chairman was absent and a number of changes were made.

Commissioner Voytilla would like to see the Chairman review it.

Mr. Sparks stated that the Chairman would be Commissioner Johansen, the sitting Chairman. Commissioner Heckman noted that the Chairman had the option to share the results of the proceedings with the Commission before signing.

Mr. Sparks stated that upon his receiving the land use order, he could copy the land use order and the proposed text to everyone who was here tonight. A time limit would have to be set for comments by Commission members. Commissioner Johansen said one week's time after receipt would be ample.

A point of clarification was made regarding the amendment number, it should read TA99-00002.

The public hearing portion of the meeting was closed. There were no further comments.

Commissioner Kirby MOVED and Commissioner Dunham SECONDED a motion to approve TA99-00002, the 1999 OMNIBUS DEVELOPMENT CODE TEXT AMENDMENT #2, as amended, meeting the criteria based on the facts and findings in the Staff Report dated September 1, 1999.

The question was called and the motion CARRIED unanimously.

ADJOURNMENT at 10:00 p.m.